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THE EARLY HISTORY OF IOWA.

BY CHARLES NEGUS.

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THE HALF-BREED LANDS.

Of these claims to the Half-Breed lands, Reed's right, and those who claimed through him, was known as the judgment title. Those who were made parties to the suit of partition and claimed their right by purchase from the Half-Breeds, designated their claims as the decree title. And those claims which had been acquired by squatting on the lands, were known as the settler's title. And in addition to those there were other claims set up to portions of those lands by individuals who claimed to be of those for whom the lands had been reserved, or had purchased interests from them, and through fraud had never been made parties to the suit of partition, and endeavored to assert their rights to a portion of the lands by trying to get the decree of partition set aside.

Elizabeth DeLouis, formerly Elizabeth Hunt, a Half-Breed, and her husband, Henry DeLouis, and John Wright, on the 20th of August, 1845, filed a bill of complaint against Wm. Meek and others, in the District Court of Lee County, charging fraud in the rendering of a decree in partition of the Half-Breed lands, made on the 8th of May, 1841, in the case of Spaulding and others vs. Antaya and others, and stating among other things that they had a good and valid title, regularly derived through the treaty, making a reservation to the Half-Breeds of the Sac and Fox Indians to a portion of the lands decreed and partitioned to others.

To this bill there was a demurrer interposed which was sustained by the District Court. The parties appealed from the rulings of this court to the Supreme Court, but before it was submitted to the Supreme Court, the bill was dismissed as to DeLouis and his wife on their own motion, and Wright left to prosecute the suit by himself. Wright had joined in this suit to obtain one-fourth of a share for which he had a regular chain of title from Francoise Hebert, whom he claimed, was one of the parties for whom the reservation was made.

In the Supreme Court, the rulings of the District Court were reversed and the case remanded back to the District Court, for that court to proceed and try the case on its merits.

Before the case was again reached for hearing, Wright conveyed his interest in the lands to his children, and when the case again came up for trial in the District Court, this conveyance was pleaded in bar to the action, and the plea sustained by the court. And in this decision the case was again taken to the Supreme Court, and again reversed, and sent back for further hearing, but before the case was tried the defendant came forward and tendered to Wright a deed for one-fourth of a share, the amount of land which he claimed, and thus ended the contest as far as these parties were concerned.

At the October term in 1847, Peter Powell, James May and several others, filed their joint bill against Josiah Spaulding and others, in the District Court of Lee County. This bill set forth the several interests of the complainants alleging that they in common with others mentioned in the bill, as far as the same were known, were seized in fee as tenants in common of all the lands commonly called "the Sac and Fox Half-Breed reservations." After stating their several interests in the lands, they proceeded to charge that Josiah Spaulding and others on the 14th of April, 1840, filed in the clerk's office of the District Court of Lee County, a petition for a partition of the Half-Breed lands; that after going through the requisites required by law, at the April term of the Court for 1841, there was a decree entered up by the court partitioning the lands. The petition then charged that the proceedings in obtaining the decree were fraudulant, and set out the frauds in twenty-nine distinct and seperate counts. To this bill the defendants demurred, and the demurrer was sustained by the District Court, and judgment entered thereon, from which complainants appealed to the Supreme Court. In the Supreme Court this demurrer was overruled and the case remanded back to the court below for trial on the merits. On the rehearing of this case by the District Court, it was again decided adverse to the interest of the plaintiffs, and by them again taken to the Supreme Court. When the case came up

for hearing again in the Supreme Court, J. C. Hall appeared on the part of the appellants, and proposed to have the case dismissed and the decision of the court below affirmed; while Daniel F. Miller, who appeared as attorney for part of the complainants, objected to the propositions of Hall, and insisted on having the case argued and tried before the Supreme Court on the merits, but Hall prevailed in his efforts, and the decision of the District Court was affirmed.

A part of the complainants were very much dissatisfied at the way in which the case was finally disposed off, and claimed that it was "determined by a fraudulent decree in favor of the defendants; that the defendants compromised, and bribed a part of the complainants, or those having in part charge of the complainants' suit; had a sham trial and sold out a decree to the defendants," and this was the last effort made in the State courts to set aside the decree of partition, and the division made by the partition suit began to be regarded as a permanent thing.

Hugh T. Reed, after he had obtained his deed to the Half-Breed tract, by virtue of the sale made on the executions issued on the judgment in favor of Johnstone and Brigham, undertook to test the validity of his title by obtaining a legal decision. He brought an action of ejectment or right against Joseph Webster to recover possession of the North-east quarter of section number twelve, in township number sixty-seven north, of range five west, containing one hundred and sixty acres, a part of which was in cultivation and in the possession, and was the home of Webster. This case was tried in the District Court of Lee County at the May term of 1845, the Hon. Charles Mason, presiding. On the trial Reed offered in evidence the judgment in favor of Johnstone and Brighim against the "owner of the Half-Breed lands lying in Lee County," to which the defendant objected on the ground that the court had no jurisdiction to render judgment. The plaintiff then offered in evidence the execution and levies and the deed of the sheriff, to the introduction of which the defendant objected. The plaintiff then proved the possession of the defendant at the time of commencing the suit, and

then gave in evidence a plat of the survey of the Half-Breed reservation, duly certified from the general land office, and proved by a surveyor who had traced the lines of this reservation, that the land in controversy was in and a part of the reservation. The plaintiff also introduced the laws of 1838, appointing Johnstone and Brigham commissioners to hear testimony, for the purpose of ascertaining the relative interest and the real owners of the land, and the laws of 1839 repealing the acts of 1838, and authorizing Johnstone and Brighham to bring suit for the recovery of their fees, which was all the evidence offered by the plaintiff.

The defendant having objected to the introduction of the plaintiff's testimony at the proper time, and made all the rulings of the court and the evidence introduced a matter of record by bills of exceptions at the close of the plaintiff's testimony, moved for a non-suit, for reasons set forth, viz:

"1. That the plaintiff had failed to show title in the defendants to the judgment of Johnstone and Brigham, inasmuch as the act of Congress, approved June 3, 1834, which ceded the lands to the Half-Breeds, was a private act, and not having been given in evidence, the court could not take notice of it.

"2. That the Indian title to the land had never been extinguished, and therefore it was not subject to sale on execution.

"3. That the plaintiff had failed to prove that any one of the owners was a resident of Iowa territory during the pendency of the suit of Johnstone and Brigham, and the judgments not having been rendered against any person by name, they were therefore mere nullities, and if not nullities, could not authorize an execution against the Half-Breed tract in satisfaction.

"4. The laws of the Territorial Legislature, referred to, were unconstitutional and void, and therefore the judgments rendered in pursuance of them, were void.

"5. That the jurisdiction of the court in respect of the suit of Johnstone and Brigham was special and limited, and therefore the plaintiff should have proven the regularity of all the steps in the suit antecedent to the judgment."

This motion was overruled by the court, and Webster then offered to prove that the judgments, executions, sheriff's sale and deeds offered in evidence by the plaintiff were all procured by fraud, and that the whole title of plaintiff was based upon fraud, which proof was ruled out by the court. Webster "for the purpose of showing title in himself to the land in controversy, having given proof by hearsay from sundry persons, that one Na-ma-ton-pus was a Half-Breed of the Sac and Fox nations, and also that certain Indians had so stated, and had made oath to the fact; also that certain persons who had married Half-Breeds (not proved to be relatives to Na-ma-ton-pus by either blood or marriage, but who were intimate with the Indians, and talked their language,) had stated, while living, that Na-ma-ton-pus was a Half-Breed; also that his complexion indicated such an origin; then offered in evidence a deed from Na-ma-ton-pus to one Joseph Bond, and from said Bond to one Theophilus Ballord, both duly executed and acknowledged, and conveying to said Ballord all the interest of said Na-ma-ton-pus as a Half-Breed, in the reservation referred to, and also a deed from Ballord and wife to the defendant Webster, for all of said interest, also duly executed and acknowledged." To the introduction of these deeds in testimony, the plaintiff objected, and the objection was sustained by the court. Webster then proved that he came into possession of the land in 1838 by virtue of a title derived from Na-ma-ton-pus, that when he purchased there were improvements on the land, and that he had been in possession ever since the purchase.

Webster "then offered to prove by parol testimony that no service had ever been made upon any person in the suit of Johnstone and Brigham; that no notice was given by publication of the pendency of said suit; that the plaintiff Reed was one of the council who procured said judgments; that said judgments were rendered upon fictitious demands, and were never proven before the auditors; that Webster and some of the other owners of the Half-Breed tract of lands were prevented from appearing and defending said suit of

Johnstone and Brigham by fraudulent representation of plaintiff; that the sales were in fact never made by Sheriff Taylor, and that the whole returns of the sheriff on the execution were false and fraudulent."

The introduction of this testimony was objected to by the plaintiff, and the objections sustained by the court. When upon the foregoing testimony and rulings of the court, the parties rested their case and submitted it to the jury, when the defendant asked the court to instruct the jury as follows:

"1. That unless it was proved to the satisfaction of the jury that there were some person or persons within the territory of Iowa at the time of the issuing of the process, or who appeared at the trial or at some stage of the proceedings, that were within the jurisdiction of the District Court of Lee County, during the pendency of the suit of Johnstone and Brigham, upon which the title accrued, that owned or had an interest in the lands, they must find for the defendant.

"2. That unless they find from the evidence that there were owners and persons, or corporations other than the Government, who were owners, or had an interest in said lands at the commencement of these suits by Johnstone and Brigham, that they must find for the defendant.

"3. That unless it has been proven to the jury that the defendants sued by Johnstone and Brigham, and upon whose judgment plaintiff claims his titles, were a corporation by virtue of laws, and acting as such, and are liable as such, or a partnership firm by that name, or some kind of an association, who had assumed the name of owners of the Half-Breed lands in Lee County, that the plaintiff cannot recover.

"4. That if it is not proven to the jury that the judgments of Johnstone and Brigham were rendered against some person or persons, body corporate or association of individuals, whose existence has been proved to exist at the commencement of this suit, or at the rendition of the judgments, that they must find for the defendants.

"6. That a judgment against a dead person, who has no existence whatever, is no judgment at all in contemplation of law, and a sale under such a judgment is void."

These several instructions were refused by the court, and the jury returned a verdict for the plaintiff, and judgment was rendered accordingly.

The case was appealed to the Supreme Court and there ably argued. Daniel F. Miller and J. C. Hall appeared for Webster, and Henry W. Starr and Cyrus Walker for Reed, and the decision of the Supreme Court was adverse to the claims of Webster.

This suit virtually decided that the whole Half-Breed tract belonged to Reed, which decision, if he could have sustained, would have made him one of the richest men in the West. But a matter in which so many persons were interested, and involving so large an amount of property as was disposed off if this decision was to be taken as settling the title to those lands, did not rest on this decision. Reed found others who, notwithstanding this decision, were disposed to contest his right to certain portions of the Half-Breed tract.

This decision was made by Charles Mason, Joseph Williams and Thomas S. Wilson, (who were the three district judges of the territory, and jointly formed the Supreme Court) after Iowa had assumed a State constitution, and just as the territorial judges were about to retire from the bench.

After Iowa became a State the Supreme Court was changed, so that none of the old judges except Williams, remained on the bench.

Reed found that notwithstanding his success over Webster, that all of the settlers on the Half-Breed tract, were not willing to acknowledge the validity of his title and quietly yield to him their possessions, but if he wished to get possession, he had yet again to resort to the strong arm of the law. He brought another suit against one Wright to obtain possession of the South-east quarter of section two, in township sixty-five, north of range five west, and on this trial he proved that the defendant was in possession of the land; and other testimoney was introduced similar, as had been in the case against Webster, and he undertook to offer in evidence the judgment in favor of Johnstone and Brigham, the execution and the returns thereon, and the sheriff's deed. To the introduction

of this testimony, the defendant objected, and his objections were sustained by the court.

Without this testimony the plaintiff could not sustain his case, and judgment was rendered in favor of the defendant, and Reed appealed to the Supreme Court.

This case involved the same questions as were argued in his case against Webster, but they were either presented in a different light than they were in the previous trial or the new bench had a different opinion of the law governing the case, for the State Court did not sustain the decision of the territorial bench

In this case they held "that it was the right and duty of the judicial power in the State to decide all acts of the legislature made in violation of the constitution to be void. That the legislature of Wisconsin Territory could not curtail rights conferred nor confer rights withheld by the ordinance 1787. An act of the legislature of the territory of Wisconsin entitled an act for the partition of the Half-Breed lands and for other purposes, approved January 16, 1838, and an act supplementary thereto approved January 22, 1838; and also an act passed by the Iowa Legislature approved January 25, 1839, to repeal both of said acts, are repugnant to the ordinance of 1787, and also the organic law of Wisconsin and Iowa, and are therefore void. So also are judgments rendered by virtue of said laws. Void judgments are never binding, but judgments merely voidable may be enforced until reversed by a superior authority. Judgments from courts of general jurisdiction cannot be collaterally impeached unless absolutely void upon their face. In an action of right the plaintiff must recover upon the strength and validity of his own title, and should show a valid subsisting interest in the land, that no such interest can accrue from a void judgment."

In this case the highest judicial tribunal of the State decided adverse to Reed's judgment title. But the contest did not stop here; suits were brought in the Federal Courts and appealed to the Supreme Court of the United States, and the same rulings were given by that court as those made by the Supreme Court of Iowa, and Reed was forced to abandon all

interest which he had claimed by virtue of his judgment title.

The troubles growing out of the Half-Breed reservation, in various ways, was a fruitful source of litigation in Lee County for about twelve years. But after Reed's judgment title was declared by the courts to be based upon unconstitutional laws, and his pretended right to the land of no validity, and the courts had held that the decree of partition was valid and binding upon all parties, or at best had made no decision impairing that decree, the principal difficulties seemed to be between the real owners of the lands and those who had squatted upon them.

The decisions which had incidentally been made in the several suits pertaining to the Half-Breed lands, were such that stripped the settlers of nearly all the rights which they supposed were guaranteed to them by the several territorial laws enacted for their special benefit. By the decisions of the court the settlers could not claim for any improvements which they had made on the lands, other than as an offset to damages which the owners of the land might claim by way of rents.

When the settlers found that they were stripped of their supposed rights by the rulings of the courts, their feelings became very hostile against those who had been instrumental in prosecuting suits adverse to their interests, and attempts were made among the settlers to organize an armed force for the purpose of resisting the officers of the law if they attempted to execute any legal process by which the settlers were to be ejected from their possession in the Half-Breed lands.

About the time the litigation in relation to Reed's judgment title and the attempt to set aside the decree of partition had ceased, Judge Mason, who had been on the bench when the litigation commenced, and was familiar with the titles of the several claimants to these lands, purchased the interest of the New York Company, and Mason, feeling disposed to pursue a conciliatory course towards the settlers, proposed to sell the lands to those settlers upon them at a fair price or pay them for their improvements. The leading men who were occupying the lands which Mason had purchased, being satis-

fied to comply with his propositions, the spirit of opposition to the enforcement of the law died away, and the litigation about the Half-Breed tract ceased, and the titles become fixed and settled.

These disputes about the title to the Half-Breed lands, among those living on them, assumed to some extent a political cast. At the first election in the State for district judge, which took place the next April after the organizing of the State government, the interest of the settlers on the Half-Breed tract controlled the election.

In the judicial district embracing Lee County, Lacon D. Stockton, of Des Moines County, was the whig candidate, and George W. Williams, of Lee County, the democratic candidate. Stockton was a man about thirty years old, a good lawyer, of unimpeachable integrity, and a man every way calculated to make a good judge. But under the territorial government he held the office of prosecuting attorney for that judicial district, and in the course of his official duties had been called upon to give his opinion in relation to some legal questions concerning the difficulties about the Half-Breed lands, in which he gave his views of the law in writing adverse to the interests of the settlers on these lands.

Williams was a worthy young man but had had but very little experience in the practice of law, and under ordinary circumstances would not have been thought of for a position of this kind, but being a partner of Daniel F. Miller, who had been regarded as the settlers' lawyer from the commencement of these difficulties, and having entertained, like his partner, opinions favorable to the settlers' rights, gave him favor with them, and at the election he received nearly every vote in the Half-Breed tract, which, though the district had a decided whig majority, secured the election of Williams, the democratic candidate. But notwithstanding he owed his election to the votes of those interested in these local questions, when he came to act as judge on questions involving the settlers' rights, he did not, as judge, sustain the opinions of the law expressed as a lawyer, but decided right the reverse.

In electing representatives to the first State legislature, men were voted for with regard to their views in relation to these disputes, without reference to their political principles. At this election, Lee County, notwithstanding there was in the county a large democratic majority for State officers, sent to the legislature a representation partly composed of democrats and partly of whigs, the ticket elected having been made up of men who were favorable to the interests of the settlers on those lands, without reference to their other opinions.

If Lee County had elected a full representative ticket of whigs, or of democrats, there would have been a decided majority in both branches of the legislature. The representatives from Lee County, to a certain extent, acted independent of the two political parties, and the result was, the first legislature of the State failed to elect Supreme Judges or United State Senators, and for the first two years of the State government Iowa was not represented in the United States Senate. This combination of parties in Lee County created much interest in the State at the time, which will be noticed hereafter in connection with other matters.

HISTORY OF MAHASKA COUNTY.

BY CAPT. W. A. HUNTER, OF OSKALOOSA HERALD.

[Continued from page 302.]

CHAPTER II.

The reader has doubtless observed that we make no special attempt at connection in this history. Our main object is to give the leading facts of interest as they come to our notice, and in doing so, we endeavor to state nothing but facts.

The commissioners' record, under date of May 25, 1844, contains the following important item: "Ordered by the board, that grocery license shall be allowed to grocery keepers in said county, for the sum of twenty-five dollars per year, and the same in proportion for a shorter time."

The question naturally arises here, what did this license authorize the recipient to sell? Was it coffee, tea, sugar, to-